

**FEDERAL COMMUNITY DEFENDER**

**EASTERN DISTRICT OF MICHIGAN**

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**VIA ECF**

Hon. David M. Lawson  
Theodore Levin United States Courthouse  
231 W. Lafayette Blvd.  
Room 775  
Detroit, MI 48226

**NOTICE OF SUPPLEMENTAL AUTHORITY**

**Re: *United States v. Cromer*, 2:07-20189-DML-RSW-2**

Dear Judge Lawson:

In any motion for a reduction in sentence pursuant to 18 U.S.C. § 3582, the Court must consider whether or not the factors set forth in 18 U.S.C. § 3553(a) favor release. 18 U.S.C. § 3582(a). Those factors include the health of the defendant. *See* 18 U.S.C. § 3553(a)(1). Although Mr. Cromer does not currently report any underlying conditions that make him particularly susceptible to COVID-19, we respectfully urge the Court to nonetheless consider the conditions of Cromer's detention at FCI Elkton in support of his release.

**Conditions at FCI Elkton**

Cromer is currently detained at FCI Elkton, a Bureau of Prisons facility located in Lisbon, Ohio. Cromer was detained at FCI Elkton at the time of filing his *Supplemental Brief* on March 12, 2020. Dkt. No. 226. Cromer has remained in detention at FCI Elkton since that date.

Since the filing of that brief, COVID-19 has raged through BOP's facilities nationwide, and in particular at FCI Elkton. Nine inmates have died of COVID-19 at FCI Elkton. More than 900 inmates have contracted the virus at the facility, equal to more than two-thirds of the current inmate population. <https://www.bop.gov/coronavirus/>. Multiple federal judges have expressed severe disapproval of Elkton's failure to take more dramatic measures to save inmate lives. *See United States v. Brooks*, No. 07-CR-20047-JES-DGB, 2020 WL 2509107, at \*6 (C.D. Ill. May 15, 2020) ("FCI Elkton has shown an inability to successfully contain the outbreak thus far."); *Wilson v. Williams*, No. 4:20-CV-00794, 2020 WL 1940882, at \*8 (N.D. Ohio Apr. 22, 2020) ("Elkton has altogether failed to separate its inmates at least six feet apart, despite clear CDC guidance for some time that such measures are necessary to stop the spread and save lives.").

In *United States v. Wabid*, No. 1:14-CR-00214, 2020 WL 4734409, at \*2 (N.D. Ohio Aug. 14, 2020), the court granted release, even though the defendant was "not

among those particularly vulnerable to the virus,” because “the institution he is incarcerated at—FCI Elkton—has been heavily affected by COVID.” And in *United States v. Rupert*, No. 10-40009, ECF No. 68 (C.D. Ill. May 21, 2020), the court granted release to a 42-year-old inmate with well-managed diabetes that did not require medication. The court’s finding of “extraordinary and compelling” reasons for release was based “primarily” on the terrible conditions at Elkton, and the fact that the prison “has been unable or unwilling to meaningfully address the COVID-19 outbreak at FCI Elkton.” *Id.* at 5-6.

As shown below, several courts have granted compassionate release from FCI Elkton in light of the COVID-19 pandemic, the vast majority over the government’s objection. These opinions include at least eleven release decisions from this district alone.

<b>Compassionate Release Grants from FCI Elkton in this District</b>	
<i>United States v. Wren</i> , No. 10-20137, 2020 WL 5087978, (E.D. Mich. Aug. 28, 2020) (Michelson, J.)	43-year-old inmate with obesity, hypertension, and <i>prediabetes</i>
<i>United States v. Goldfein</i> , No. 13-20882, ECF No. 284 (E.D. Mich. Aug. 5, 2020) (Levy, J.)	Inmate with diabetes and hypertension
<i>United States v. Galka</i> , No. 16-20254, ECF No. 108 (E.D. Mich. ) (Levy, J.)	57-year-old inmate with obesity, hypertension, and sinus problems
<i>United States v. Dean</i> , No. 11-20195, 2020 WL 4251344 (E.D. Mich. July 24, 2020) (Parker, J.)	48-year-old inmate with sleep apnea
<i>United States v. Roe</i> , No. 15-20581, ECF No. 374 (E.D. Mich. July 16, 2020) (Levy, J.)	52-year-old inmate with BMI of 38
<i>United States v. Bandron</i> , No. 17-20077, 2020 WL 4050242 (E.D. Mich. July 20, 2020) (Leitman, J.)	Inmate convicted of sex offense with asthma, epilepsy and hematuria
<i>Tubbs-Smith v. United States</i> , No. 18-20310, 2020 WL 3618511 (E.D. Mich. July 2, 2020) (Tarnow, J.)	31-year-old inmate with heart disease
<i>United States v. McConico</i> , No. 15-20267, 2020 WL 4431424 (E.D. Mich. July 31, 2020) (Tarnow, J.)	41-year-old inmate with obesity, diabetes, and hypertension
<i>United States v. Jackson</i> , No. 15-20507, 2020 WL 4284305 (E.D. Mich. July 27, 2020) (Hood, C.J.)	57-year-old inmate with diabetes and hypertension
<i>United States v. Matthews</i> , No. 11-20790, ECF No. 214 (E.D. Mich. July 2, 2020) (Friedman, J.)	Inmate with asthma

<i>United States v. Goins</i> , No. 11-20376, 2020 WL 3064452 (E.D. Mich. June 9, 2020) (Leitman, J.)	Inmate with hypertension
<b>Compassionate Release Grants from FCI Elkton in Other Districts</b>	
<i>United States v. Ford</i> , No. 13-CR-62-5-JPS, 2020 WL 5259254 (E.D. Wis. Sept. 3, 2020)	Inmate with obesity, diabetes, hypertension, and liver dysfunction
<i>United States v. Williams</i> , No. 16-386, 2020 WL 5228141 (N.D. Ohio Sept. 2, 2020)	61-year-old inmate with diabetes, neuropathy, hypertension, high cholesterol, COPD, and obesity
<i>United States v. Wahid</i> , No. 1:14-CR-00214, 2020 WL 4734409 (N.D. Ohio Aug. 14, 2020)	Not vulnerable to virus, but released on the basis Elkton has been hit hard by COVID-19
<i>United States v. Cunningham</i> , No. 15-83-1, 2020 WL 4346811 (E.D. Wis. July 29, 2020)	54-year-old inmate with obesity, Meniere's disease, kidney disease, sleep apnea, and high cholesterol
<i>United States v. Ikegwuonu</i> , No. 15-21-WMC-2, 2020 WL 4051864 (W.D. Wis. July 20, 2020)	Inmate with diabetes, sickle cell disease, and hypertension
<i>Bruno v. United States</i> , No. 4:17-72, 2020 WL 4192282 (E.D. Va. July 16, 2020)	Inmate with HIV and mental health concerns
<i>United States v. Edwards</i> , No. 5:15-00339, 2020 WL 4003050 (N.D. Ohio July 15, 2020)	Inmate with liver disease and hypertension
<i>United States v. Neal</i> , No. 15-CR-00339, 2020 WL 4003049 (N.D. Ohio July 15, 2020)	Inmate with asthma and sickle beta thalassemia
<i>United States v. Fletcher</i> , No. CR TDC-05-0179-01, 2020 WL 3972142 (D. Md. July 13, 2020)	65-year-old inmate with diabetes, kidney disease, and hypertension
<i>United States v. Collins</i> , No. 10-CR-00963-1, 2020 WL 3892985 (N.D. Ill. July 10, 2020)	38-year-old inmate with sarcoidosis and asthma
<i>United States v. Jones</i> , No. 13-CR-577-2, 2020 WL 3892960 (E.D. Pa. July 9, 2020)	48-years-old inmate with hypertension
<i>United States v. Barnes</i> , No. 13-117, 2020 WL 3791972 (E.D. Tenn. July 7, 2020)	67-year-old inmate with heart disease, asthma, and COPD
<i>United States v. Moit</i> , No. 17-CR-83, 2020 WL 4558953 (N.D. Ind. June 29, 2020)	73-year-old inmate, convicted of sex offense, with diabetes, COPH, and hypertension
<i>United States v. Ollie</i> ,	62-year-old inmate with obesity, diabetes, and hypertension

No. CR 1:12-09, 2020 WL 3469754 (W.D. Pa. June 24, 2020)	
<i>United States v. Jackson</i> , No. 2:18-CR-86-PPS, 2020 WL 3396901 (N.D. Ind. June 19, 2020)	31-year-old illness with hypertension, obesity, and a history of bronchitis
<i>United States v. White</i> , No. 17-00198-4, 2020 WL 3244122 (S.D.W. Va. June 12, 2020)	Inmate with liver disease and hepatitis C
<i>United States v. Williams</i> , No. 06-CR-0143, 2020 WL 3097615 (D. Minn. June 11, 2020)	50-year-old inmate with obesity and heart disease
<i>United States v. Nieves</i> , No. 16-CR-504, 2020 WL 3410335 (S.D.N.Y. June 8, 2020)	52-year-old with heart disease
<i>United States v. Chester</i> , No. 6:17-CR-06151 EAW, 2020 WL 2771077 (W.D.N.Y. May 29, 2020)	44-year-old, convicted of failure to register as a sex offender, with heart disease
<i>United States v. Rupert</i> , No. 10-40009, ECF No. 68 (C.D. Ill. May 21, 2020)	42-year-old with well-managed diabetes or prediabetes that did not require medication
<i>United States v. Bright</i> , No. 15-00015-5, 2020 WL 2537508 (W.D. Va. May 19, 2020)	51-year-old with COPD, asthma, kidney problems, hypothyroidism, ruptured discs, heart problems
<i>United States v. Seggebruch</i> , No. 15-20034, ECF No. 113 (C.D. Ill. May 15, 2020)	40-year-old with a history of heart disease
<i>United States v. Brooks</i> , No. 07-20047, 2020 WL 2509107 (C.D. Ill. May 15, 2020)	45-year-old with obesity, asthma, hypertension, and recent bowel obstruction surgery
<i>United States v. Coles</i> , No. 00-20051, 2020 WL 1976296 (C.D. Ill. Apr. 24, 2020)	48-year-old with hypertension, prostate and bladder problems, prediabetes, and a dental infection
<i>United States v. Love</i> , No. 14-4-1, ECF No. 41 (W.D. Mich. Apr. 21, 2020)	Prisoner with heart condition and fear that infection might be serious or fatal
<i>United States v. Rodriguez</i> , No. 03-00271, 2020 WL 1627331 (E.D. Pa. Apr. 1, 2020)	Prisoner with diabetes, hypertension, obesity, and liver abnormalities

The government may note that the rate of infection and death at FCI Elkton appears to have slowed. Right now, the BOP website shows 3 active cases of COVID-19 among inmates, and 12 active cases among staff. But this number is misleading because, as shown in the ongoing class-action against FCI Elkton, staff has greatly reduced its testing of inmates for the virus. *See Wilson v. Williams*, Cr No 20-cv-794 (N.D. Ohio). The BOP website shows there is just one pending test. “This disease

spreads asymptotically, which means the Court and the prison system can take no comfort in a lack of confirmed cases, and all parties should be deeply concerned by the lack of universal testing of inmates and staff.” *Amarrah*, 2020 WL 2220008, at \*6. Courts thus continue to grant release to inmates at Elkton in light of the virus. *See United States v. Ford*, No. 13-CR-62-5-JPS, 2020 WL 5259254, at \*5 (E.D. Wis. Sept. 3, 2020); *United States v. Wren*, No. 10-CR-20137, 2020 WL 5087978, at \*5 (E.D. Mich. Aug. 28, 2020). The lack of continued widespread testing at FCI Elkton means that the risk to Reed remains despite the apparent drop in active cases.

### **Other Legal Authority**

Mr. Cromer also advises the Court that the Fourth Circuit in *McCoy* joined the Second Circuit in *Zullo/Brooker*, 976 F.3d 228, 230 (2d Cir. 2020), the Sixth Circuit in *Jones*, No. 20-3701, 2020 WL 6817488 (6th Cir. Nov. 20, 2020), and the Seventh Circuit in *Gunn*, No. 20-1959, 2020 WL 6813995 (7th Cir. Nov. 20, 2020), finding that district courts have broad authority after the FIRST STEP ACT to determine whether and when "extraordinary and compelling" reasons may justify a sentence reduction when an imprisoned person files a 3582(c)(1)(A) motion. *US v. McCoy*, No. 20-6821 (4th Cir. Dec. 2, 2020).

Last, undersigned counsel respectfully requests that this Court consider and adopt notices of supplemental authority filed by counsel for the co-defendant, Mr. McDonel, Case No. 07-20189-1, in docket entry numbers 236-239, 241-243, 245-247, and 249-252, so much as they relate to courts granting compassionate release to defendants charged with stacked 924(c) convictions.

Respectfully Submitted,  
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